

ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Christine Bennett, Melissa Horner,

Also Present: Doug Greene, Planner.

Absent: Ed Cieleuszko, Casey Snyder – Alternate (excused).

Voting members: Dennis Lentz, Christine Bennett, and Melissa Horner.

NOTE: The meeting was delayed until a quorum was reached.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – REVIEW AND APPROVE MINUTES

Approval of minutes was postponed to the next regular meeting.

ITEM 6 – PUBLIC HEARINGS ON TOWN ORDINANCES

A. Prepare Adult Use Marijuana Ordinance for Town Vote

7:14 PM Public Hearing opened.

Mr. Lentz said that we have spent 6 to 8 months trying to put together something that was fair for applicants as well as the Town; that we started with a template from South Portland, explaining that we had looked at many of the other towns around and felt that South Portland was very good, recognizing that it is a city and not everything applied. He added that the document is currently in 3 or 4 pieces so that the pieces can be directly put into the appropriate ordinances that are already there. He cited, as an example, putting 'Marijuana Establishment' in the Table of Land Uses showing that it is only allowed in the C/I District with Site Plan Review. He said that the meat of the ordinance is what is called Eliot Code §33-190 and, then, Chapter 11 that has all the definitions.

A member of the public commented that the PB had said that, with the application, it would be filled out every time and the PB would have to review it, asking if that implied that there is a term on the licensing that you are giving to these businesses.

Ms. Bennett said no; that the licensing piece is in there but coming before the PB is a discrete piece; that one wouldn't have to repeatedly come before the PB but there is a

recurring license, which would be a routine municipal function, not a land use function, in conjunction with the State.

Mr. Lentz said that another section is the fees but we haven't finished that because we don't know what the State is doing; that the fees would probably go through the front office, here, as it's not necessarily the PB that will issue permits, licenses, and things like that.

Ms. Bennett said that that will be going to the Select Board; that the PB will focus, if we want it in Town, on where we want it in Town and what it will look like.

Mr. Lentz clarified that this draft is not cast in stone; that they have not yet gone through the Town Manager, SB, or this Public Hearing and it's liable to change with that input. He added that the Cannabis Committee (AURCC) has been helping us, among others, so it's not a stand-alone document. He reviewed §33-190 Performance standards for marijuana establishments:

- All screened in accordance with §33-175 (landscaping)
- All will comply with §45-495(15) Parking requirements
- Signage and advertising must comply with applicable provisions of Chapter 45 and no signage or advertising will use the word 'marijuana' or 'cannabis' or commonly-used symbol

Ms. Bennett clarified that, with this, we sought consistency as we already have a medical marijuana ordinance and we wanted consistency with that; that medical marijuana has this (signage) condition on it.

Mr. Lentz added that South Portland combined their medical and retail marijuana into one document and we thought that was confusing so we kept them as separate ordinances. He clarified that 'marijuana establishment' meant includes retail store, cultivation, manufacturing, and processing. He continued the review of §33-190:

- Areas of activities of marijuana conducted indoors, have odor management, appropriate ventilation for noxious gases and fumes, operational plan for proper disposal of marijuana and related by-products, sufficient and appropriate security measures.

Ms. Bennett clarified that, with this use, particular items were added not normally required, such as security cameras, locks on all windows and doors related to any structure, and specific lighting.

Mr. Lentz continued:

Separation of sensitive uses; however, sensitive uses will not be precluded from opening within buffer zones of established marijuana uses.

- Hours of operation
- Size limitation (canopy)
- Sale of edible products
- Drive-through and home delivery prohibited.

- Pesticides.
- Inspections (CEO and Fire Chief)
- Change of use/addition of use.
- Other laws remain applicable (local/State).

Mr. (Brigham) Pendleton asked, regarding 'separation of sensitive uses', if not precluding sensitive uses would mean that a marijuana establishment could open and, then, one of those disqualifying businesses (sensitive uses) could open up next door and impact the licensing going forward.

Ms. Bennett said no, that it wouldn't impact licensing.

Ms. Horner said that, if a marijuana establishment opens and, two years later, a daycare wants to open next door, then that's up to the daycare; that the opposite couldn't happen.

Mr. Pendleton asked if there had been any consideration of separating out the different aspects of marijuana production so that growing might be permitted off of the C/I Zone where we could have better areas to grow or more appropriate land for growing.

Ms. Bennett said that, at this time, we have not; that we are considering it as a group because, primarily, the regulations coming from the State indicate that, at a minimum, you need to keep it shielded from your neighbor visually and this seemed like the easiest first step.

Mr. Pendleton raised his concern for the impact of pollution on the product if limited to the C/I Zone.

Ms. Horner said that she was under the impression that any growing had to happen indoors.

It was clarified that you will be able to grow outdoors, as well, by State statute.

Mr. Lentz said that it can be grown outdoors but it must be enclosed (greenhouse).

Attorney (Chris) McCabe, cannabis law practice, said that there isn't a definition of residential property; that there's a definition of residential use so this could be an opportunity to put a definition in there of what residential property means.

Ms. Bennett said that our working assumption is that the definition of a residential property is one that has a residential use on it. She added that we do not have a definition for every single granular piece of land use and that is a philosophical position we have taken for a long time, in not defining every hair on that head.

Mr. Lentz said that we've also talked about 'public facility' and what that is, for example; that there are still questions.

Attorney McCabe said that he just wanted to point out that the definition of 'residential use' talks about it being a single-family unit; that that wouldn't include something that had more units.

Ms. Bennett said that that is a portion of our code that may get taken up as people start to consider multi-family or affordable housing in our C/I Zone; that there are some pretty strict requirements as to what can happen there and that's part of why we put it there; that this is a very difficult place, it would be very easy for the monitor this, and it's pretty narrow in the definition of things that can happen there.

Ms. Horner asked if he was proposing that we match up that usage with what our current definitions are.

Attorney McCabe said no, that he is pointing out the confusing language and just saying that this is an opportunity to clean it up.

Ms. (Jane) Seeley asked if there was going to be a limit on how much of the marijuana product can be sold at one time to a person; that she's thinking of it in terms of a person buying a great deal and selling it outside of the establishment, which worries her because it could involve selling it to young children. She also asked if there was going to be different levels of potency of the marijuana they are selling; that the marijuana that's being produced is 20% stronger than from the 1990's. She added that she doesn't know a lot about marijuana but it worries her that the potency has gone up so much and there have been studies showing an increase in mental illness in countries that have had marijuana for a long time, Denmark and Finland being two examples. She said that, at least for her, there are a lot of things to think about with this, also asking how it would benefit or hurt Eliot when a business comes into Town.

Mr. Lentz said that he thought these were questions they needed to pass along to the SB, as well. He added that this PB is not advocating for the use of it or against it; that we are simply trying to put an ordinance together that, if the people in Town vote this in, gives us a standard that we can start to operate by. He said that they are great questions.

Ms. Bennett said that she thinks all of Ms. Seeley's questions will be defined by the State; that we are looking at sort of the minimum here in Eliot but, in terms of potency and licensing and those pieces, those are still being discussed, she thinks, much like alcohol. She clarified that the State will create those laws but, once those are established within Eliot, if we so choose, this is where we would put it and what rules around the land it would be situated on. She added that that's what we are discussing tonight; that in terms of how it would benefit Eliot, the fat lady has not sung on that one, yet, but there's a lot of conversation, currently, at the State level about tax assessments being able to be shared from the State to the town level and also for the ability of the Town to ask for an impact fee from an establishment to help support additional Town services.

Mr. Lentz added that, once we see what the State is going to do with fees and licensing and taxes, it will give us a better idea.

Mr. (Bob) Seeley asked how the police would handle smoke shops.

Mr. Lentz said that smoke shops (social clubs) would not be allowed.

Ms. Horner reviewed Chapter 11, saying that all the definitions were pulled from the South Portland document, which was then pulled from the State so they are all State definitions that are not negotiable.

Ms. Lemire said that no one from the public had copies of this. Copies were made.

Mr. Lentz said that there are a couple of pieces to Chapter 11 – all of the definitions and the other is starting to define the licensing, which we will not really go over because we aren't sure of any of that yet.

Ms. Horner reiterated that we have the definitions and then we went into the licensing; that as of right now, we feel that our SB and the Town Clerk will be handling the chunk of that paperwork processing, much like when a bar or restaurant comes to Town. She added that she thinks the big piece we chose to do is under Licensing Class; that South Portland had two tiers of licensing and we decided to make just one tier, or class, of licensing so, basically, anyone who wants to open up any kind of marijuana establishment has to apply for this 'Class I License'. She added that we don't know how much it will cost or what the application looks like but we are proposing that the SB and Town Clerk handle it; that there will be a procedure where you fill out the application and there will be a public hearing; that additionally, there will be a renewal to each application (license); that we're not sure if it will be annually, or your anniversary date, but there will be a separate application for that. She said that something we were talking about, and might be worth discussing tonight, is whether all board of directors need an employee license, or just the employees, and how do those get renewed; so, there are some things to hammer out.

Mr. Lentz reiterated that we are a land use Board and not a Board that does licensing and permitting.

Ms. Horner said that we thought it was important to show that tonight because, if there was someone in the audience that had some feedback, we'd like to have that now versus in May when we're about to vote on this.

Ms. Bennett added that the process is that we have this hearing for land use, then we put the bones in on licensing and forward it to the SB, who will then actually fill out where our jurisdiction ends and theirs begins. She invited any comments regarding this to forward to the SB.

Ms. (Stacey) Wypski, AURCC, asked if there is anywhere in there that an applicant has to be a Maine resident to own one of these establishments.

Mr. Lentz said no.

Ms. Bennett said that she thought it was in there at one point because there was a conversation about it. She asked if that was a recommendation of your committee.

Ms. Wypski said that it looked like it was going to be a recommendation.

Mr. Brigham said that that was just a preference of towns and their licensing and how they're defining the application process; that we had gone through a few applications, as examples, that Mr. Lee had presented to us and noted some specific things, such as that, that other towns had done that we thought might be interesting things for Eliot that might fit. He added that we wanted to find out if we can be helpful to help flesh out some of that – the application side of this; that that's what we've been discussing and we'll just continue with that subject.

Mr. Lentz said yes.

Mr. Brigham said that we'll bring some thoughts on that; that we have a meeting next week.

Ms. Bennett suggested memorializing that and injecting it into the process as quickly as possible.

It was asked if there was any discussion on limitations as to how many establishments will be allowed in Eliot.

Mr. Lentz said that we discussed it but he's not sure we documented it.

Ms. Bennett said that she doesn't think we did because we're talking about the C/I Zone and that is limiting.

Mr. (Ryan) Ward asked if the PB was looking to give preferential treatment to Eliot residents that apply for licensing.

Ms. Bennett said that we didn't go down into that level but this is a public hearing and you can advocate for whatever you like.

Mr. Ward said that he thought it was just something to consider, being a Maine resident and an Eliot resident might give some extra preference in licensing.

Ms. Horner asked how we would do that if applications came in, like, three weeks apart and we're already working on 'Joe's' application for a giant company out of Colorado; that three weeks later 'Joanna' comes in and happens to live in Eliot; how would that even play out.

Mr. Ward said that it might be based on the deadlines for the application; so, for instance, you might give 60 or 90 days for an application to be submitted then, at that time, you would be able to review all the applications in one sitting; therefore, you wouldn't have to be concerned, as you mentioned, in essence like a rolling application. He added that it would all be based on the application period you would establish.

Mr. Lentz said that it would be like a growth ordinance.

Mr. (Stephen) Galin said that the only problem he saw with that is that, if you have a 60-90 day window, a lot of these people would be going to the lease-holders to say they would like to put a building here or rent their building and would have to put a down payment; that you could have 6 people that want to put stores in and 5 leases would get broken. He added that that would cause an issue for the landowners in Eliot.

Ms. Bennett said that we currently have that for subdivisions and any landowner is subject to the Growth Ordinance. She added that she agreed that that was a burden but it is something that is established and we wouldn't be singling out the C/I Zone.

Ms. Horner said that it might change once the 'shine' wears off.

Mr. (Ian) Shaw said that he thought it was interesting to note giving preference towards somebody from Eliot; that he thinks it's a good idea but he thinks it's more important to look at the broader picture and make sure they're a resident of Maine because there's a lot of large things outside of the Town of Eliot and that these decisions should be factored and based on the merit of the business and the due diligence of them to operate within what the Town is looking for rather than where the person is currently living.

Mr. Ward said that he would absolutely agree with that; that, in addition to it, if they can meet all the other elements of the criteria and they are an Eliot resident, that should hopefully hold something additionally.

Attorney McCabe said that there is a good legal argument that both State-level residency requirements and local residency requirements are unconstitutional under the Dormant Commerce Clause, which says that you can't discriminate against other states, basically' that within the United States, we have a united commerce and, so, it's not that they haven't been implemented in a lot of towns, cities, and states but it is just a constitutional flag.

Mr. Lentz said that that was noted.

Ms. Bennett said that that was good to know; that, in Rhode Island, they are only tolling trucks and that is going to the Supreme Court. She added that he brings up a god point and there is a lot of Home Rule, and a lot of state rule, in the United States. She asked if everyone had had time to read Chapter 11 definitions and would they like us to walk them through them a little bit more.

Mr. Lentz encourage people to send comments to the Planner or Town Manager on this draft ordinance, as it's not too late. He asked if anyone from the AURCC saw anything glaring.

Mr. (Hughes) Pope said that he didn't see anything new; that he would like to look at it a little closer before commenting.

Mr. (James) Folan said that the PB said that we would only have one tier; so, if, as proposed, if you want to have a cultivation facility or processing facility or combined, it would be the same tiered assets.

Ms. Bennett said that it is her understanding that the State has tiers on volume, and that's been changing, and we decided we would not follow suit; that we just have a license.

Mr. Folan asked if she was saying that you wouldn't follow the caps; that a Tier 4 is 20,000 sq. ft.

Ms. Bennett clarified that whatever facility comes into Town will have to conform to State regulations; that with our regulations, we're not going to have anything that follows suit.

8:02 PM Public Hearing closed.

Ms. Horner asked if we weren't putting a number in the Land Use Table after SPR.

It was confirmed that the Note # would be 21 and would reference "must conform to §33-190".

Mr. Lentz asked if the PB wanted to move this forward to the SB.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board move the draft ordinance for §33-190, draft revisions to Chapter 11, adding the definition of "Marijuana Establishment" to §1-25, changes to the Table of Land Uses adding "Marijuana Establishment" and being subject to Site Plan Review (SPR) in the Commercial/Industrial Zone with a footnote (#21) saying that it must conform to §33-190 to the Select Board for consideration and public hearing.

DISCUSSION

Ms. Bennett said that she would add a note to forward to the SB to indicate that the public hearing testimony that occurred included a number of people who spoke who favored licensees that were residents of the State of Maine and, secondly, the Town of Eliot.

PB members agreed.

DISCUSSION ENDED

VOTE

3-0

Motion approved

Mr. Lentz asked the Planner to address that with a letter talking about the Public Hearing and comments.

The Planner said yes.

B. Subdivision Ordinance: Updates and Revisions

8:08 PM Public Hearing opened (§41-36 Filing, recording & expiration of plan)

Mr. Lentz summarized the revision that includes a description of “substantial construction” and an end date of 36 months after posting a financial guarantee.

Ms. Bennett said that this will bring us into more compliance with surrounding towns and eliminate a certain amount of liability risk to the Town regarding completion of subdivisions.

The Planner said that he thought the more immediate concern is that, if it isn’t completed or brought to an end, standards, or regulations, will have change within the Town and, then, they are completely out of sync.

There was no public comment.

8:12 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board forward to the Select Board the draft change to §41-36.

VOTE

3-0

Motion approved

8:13 PM Public Hearing opened (§41-91 Preliminary procedure)

This was to change “planning assistant” to “planning office” and add “(3) Open Space Subdivisions” as a separate category to be consistent with Town definitions.

There was no public comment.

8:14 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board forward to the Select Board for their consideration amendments to §41-91 Preliminary procedure.

VOTE
3-0
Motion approved

8:15 PM Public Hearing opened (§41-141 Submission of application & required notices)

This was to change “board staff” to “planning office”.

There was no public comment.

8:16 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board forward this amendment for §41-141 to the Select Board.

VOTE
3-0
Motion approved

8:17 PM Public Hearing opened (§41-142 Application Fees)

This change included that an application is not considered complete until all required fees are submitted and revised terms for hiring a technical consultant.

Mr. Lentz said that we are trying to clean up ambiguous ordinance language and changed people and titles.

The Planner said that, also, one of the determinations this evening is to move the fee schedule out of the ordinances and make that a stand-alone document, saying that §1-25 fee schedule is still referenced in this so we could put that as “in an amount established by the master fee schedule”.

Mr. Lentz said that that was a smart move to create a separate document with all the fees because, right now, they are all embedded in the ordinances and every time we want to change a fee it has to go to the citizens to be voted on.

There was no public comment.

8:18 PM Public Hearing closed.

DISCUSSION

Ms. Horner said that, from her notes from the last meeting, there’s no language in this about the scope of reference being above and beyond our staff and it has been talked about several times without it being in here; that she would not vote for this amendment until that is added in there and we can review it.

Ms. Bennett asked where Ms. Horner would like to insert that.

Ms. Horner said that she thought it should be in the first sentence that “the Planning Board may make the determination to hire technical consultant(s)” *‘if the scope is beyond the capability of the Town staff’*.

There was further discussion regarding whether to add ‘conflict of interest’ wording.

The PB agreed to the word amendment without the ‘conflict of interest’ piece.

Ms. Bennett moved, second by Ms. Horner, to move §41-142, as amended, to the Select Board.

VOTE

3-0

Motion approved

8:25 PM Public Hearing opened (§41-182 Plan revisions after approval).

Mr. Lentz said that this deals with modifications or revisions to a final plan and whether they obtain PB approval; that this includes that after the completion of the project, and at the applicant’s expense, all work is inspected and approved by the town or the town’s consultant.

Ms. Bennett said that she had some notes from our last meeting on this where there was a little more clarification added to say, ‘Upon completion of the project and at the applicant’s expense all work must be inspected & approved by the Town staff or the Town’s technical consultant and a set of as-built plans submitted to the planning department in hard copy & electronic format in accordance with §41-179.’; that then she had written down §41-181 so she might not have been completely accurate about where we reference this.

It was determined that §41-179 was the correct reference.

There was no public comment.

8:28 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board amend §41-182 and move it to the Select Board.

VOTE

3-0

Motion approved

8:29 PM Public Hearing opened (§21-2 Designation, duties of building official).

Mr. Lentz said that the main change is that “The code enforcement officer shall in all cases involving septic system design (new construction or modification), require that a soils test on the premises by a site evaluator licensed by the State of Maine...”.

Ms. Horner said that this was one that Mr. Cieleuszko was concerned with.

The Planner said that he thought Mr. Cieleuszko was afraid that any kind of modification would require a soils test; that we said that, if you are changing a valve, a mechanical piece, that wouldn't require a soils test; that if it's a capacity thing, then that requires a soils test. As an example, he said that the CEO said that, if you have a farmer that's been there for 50 years and he wants to change out a cesspool that's been there forever, he would have to come up to standard and have a soils test done.

There was no public comment.

8:30 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board forward the draft changes to §21-2 Designation, duties of building official to the Select Board for their consideration.

VOTE

3-0

Motion approved

8:32 PM Public Hearing opened (Chapter 33 – Planning and Development, Site Plan Review).

Mr. Lentz explained that that is the ordinance that helps us to build and fill out the application.

The Planner said that we had changed “and amended through 2009” to “last amended in 2009”.

The PB agreed.

Ms. Bennett added that that is an addition we need to make to clarify when the last Comprehensive Plan was amended and still current.

Mr. Lentz said that it is due this year.

Ms. Bennett said that we would need a ton of people to join that committee.

Changes made to this were, as an example, ‘planning assistant’ to ‘planning office’, referencing State codes.

There was no public comment.

8:34 PM Public Hearing closed

Ms. Bennett moved, second by Ms. Horner, that the Planning Board move the proposed changes to Chapter 33, as amended this evening, to the Select Board for their consideration.

VOTE

3-0

Motion approved

8:35 PM Public Hearing opened (§33-126 Application for review).

Changes were 'developer' to 'applicant' and 'from planning assistant' to 'planning office'.

There was no public comment.

8:36 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board move the proposed changes to §33-126 to the Select Board for their consideration.

VOTE

3-0

Motion approved

8:37 PM Public Hearing opened (§33-128 Application fees).

Ms. Horner said that, in her opinion, this needs to have the same language as the last one (§41-142 *'if the scope is beyond the capability of the Town staff'*).

The PB agreed.

There was no public comment.

8:38 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board move the proposed amendments to §33-128, as amended, to the Select Board for their consideration.

VOTE

3-0

Motion approved

8:40 PM Public Hearing opened (§33-132 Performance guarantees).

Mr. Lentz said that the pertinent change was: "No performance guarantees, sureties, bonds, escrow or occupancy permits will be released until final as-built plans have been submitted to the town for record & at the registry and have been approved by the town or town's consultant. (3) hard copies will be provided to the town along with an electronic file."

It was discussed whether to add 'technical' to consultant but it was decided to leave it as that was broader and could encompass 'legal', as an example, as well. Also discussed was changing wording to have this handled by Town staff - Town Manager, Treasurer, Planning Board, or Planner versus the Select Board, which oversees Town staff and institutional familiarity/knowledge.

The Planner said that these changes were made in consultation with legal and Mr. Feldman (SMPDC). He added that the recommendation was to issue it in a form acceptable to the Town Treasurer and, then, having the Planner or DPW Director or Town's consultant recommend the amount to the PB.

Mr. Lentz said that the PB would then be the final approval after the recommendation.

The Planner said yes.

There was no public comment.

8:42 PM Public Hearing closed.

Ms. Lemire said that, under Option 1. A. at nine sentences down, it reads, "An independent, third-party professional engineer, licensed in Maine, and selected by the Planner shall be required" but everywhere else in the document it says 'Planning Board'; that that's the only place where it states 'planner'. She asked if the PB wanted it to stay that way or have that be consistent with the rest of the document.

Mr. Lentz said that it should be consistent.

Ms. Bennett said that she would argue against that in that, in the past, we have asked that an engineer be selected and then deferred to staff to do that selection.

The Planner said that what he thinks is being said here is that the Planner is selecting an engineer but not recommending it; that the PB would always approve.

Mr. Lents asked if it was always an engineer.

The Planner said that it could be another type of technical consultant; that he thinks that's more of a catch-all but if you wanted to specify "an independent, technical consultant", then we could put it like that.

Ms. Bennett said that we could add that in; that we are talking specifically about financial guarantees that are typically around roads and infrastructure so usually talking about a civil engineer. She added that we could be talking about a homeowner's association, perhaps, that may want their road adopted by the Town; that she could see that we might even need legal, at some point.

The Planner said that it does say above that *"The amount of such guaranty shall be determined by the planning board at the recommendation of the planner, public works director, town's engineer or consultant..."*.

The PB was good with those words.

It was agreed that 'road commissioner' should be changed to 'Department of Public Works Director'.

There was no public comment.

8:47 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board move the draft changes to §33-132, as amended, to the Select Board for their consideration, with a note that this has been reviewed by both our Town legal and the Southern Maine Regional Planning & Development Commission.

VOTE

3-0

Motion approved

8:49 PM Public Hearing opened (§45-4 Reference to ordinances, resolutions).

This was to update our references to our code that are actually set by the State of Maine.

There was no public comment.

8:51 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board move the draft changes to §45-4 to the Select Board for their consideration.

VOTE

3-0

Motion approved

C. Septic Ordinance: Updates and Revisions

E. Planning and Development: Updates and Revisions

These were addressed earlier.

Mr. Lentz said that there was one other thing we need to do before that application.

The Planner said that we need to do the Master Fee Schedule; that the PB needs to approve taking it out of the ordinance.

Mr. Lentz said that he wanted to get that Notice of Decision letter done, too; that that's been hanging around too long.

Ms. Bennett said that that was subject to just those two minor changes from the last time on the Notice of Decision.

Ms. Lemire agreed that they just needed the fee amount and registry numbers, and they are there.

The Planner said that there was one change in the letter about continuing use as a multi-family; that he didn't think we'd approved it as a 'multi-family' residence; that we approved his change in footprint and his reduction but didn't approve that as a multi-family residence.

Mr. Lentz asked if we were talking about the Notice of Decision.

Ms. Bennett said yes.

Mr. Lentz asked if the PB wanted to discuss that as he didn't have that fee schedule.

The Planner said that the fee schedule isn't changing, per se, but just recommending that we move it out of the ordinance; that there are no changes to it.

The PB decided to address the Master Fee Schedule at this time.

D. Master Fee Schedule

8:54 PM Public Hearing opened (Master Fee Schedule)

Ms. Bennett explained that, instead of having fees assigned throughout our ordinances in different locations, we would refer to one master fee schedule, which can then be revised on its own from time to time without having to go back and have a change in an ordinance, have the public sit through a public hearing, and have it put on a full warrant; to have it be updated on a more timely basis and have it be in one discrete location.

Ms. Bennett moved that the Planning Board forward to the Select Board for their consideration of adopting a table of fees.

The motion was not seconded.

The Planner said that he wouldn't say 'adopting a table of fees', as we already have a table of fees that are in the ordinances; that we are taking that same set of fees and just recommending that it be outside the ordinances – a stand-alone document.

Attorney McCabe said that, with the moving of this fee schedule out of the ordinances and making it easier to change, he was wondering if this was changing who has the power or is it changing who has the power to change the fees. He asked what limitations did the planning department, or executive department, have with regard to how high, or a range, of fees. He added that his concern was that it was moving from a legislative branch to the executive branch.

Ms. Bennett said that she believes the final decision will rest with the Select Board because the Select Board ultimately oversees the Town Manager and the Town Manager runs the Town Hall. She added that if we have a recommendation from planning or code or the clerk to recommend a change to the fee schedule, that fee schedule would not be adopted until it went through a legislative body, which would be the Select Board.

Attorney McCabe said that he's not sure what the standard is for which branch within the municipality is the one that rightly has the authority to set fees; that he's not sure what the norm is there; that he's just noticing.

Ms. Horner said that it would also take it out of the hands of the voter.

The PB agreed.

Attorney McCabe also agreed – direct democracy.

Ms. Bennett asked if that changed our consideration of this proposal.

The Planner said that the reason he recommended it is that it is a common feature; that in looking at surrounding towns, it is a common practice to have it as a stand-alone document.

Mr. Lentz said that this would make it more efficient but it does take it out of the hands of the citizens and the voters.

The Planner explained that the ordinances within each chapter will reference the master fee schedule, much as they do now, but it just doesn't reside in the ordinances so that it doesn't have to go through the PB process. He added that in terms of cost recovery for the Town, it is out-of-date, so it should be updated on an as-needed basis.

Attorney McCabe said that he understood the practical reasons for it. He also said that, perhaps, the PB retains review in case there's allegations of it being unreasonable or unreasonable fee changes.

The Planner said that the Select Board would have ultimate control to say that a recommendation was made that they don't agree with.

Ms. Bennett said that Attorney McCabe raised a really good point and, philosophically, it is appealing because she likes to have her voice heard and have it part of the decision.

9:02 PM Public Hearing closed.

Ms. Bennett moved, second by Ms. Horner, that the Planning Board recommend to the Select Board that we establish a stand-alone schedule of fees as referenced in other newer portions of recent changes to our code.

VOTE

3-0

Motion approved

Notice of Decision letter (PB18-4)

Mr. Lentz asked if we can just have an okay on that Notice of Decision letter. He added that it was for PB18-4, Soaring Eagle Properties, LLC, 66 Indian Rivers Drive; that that decision was February 19, 2019.

Ms. Horner said that the Planner had asked if we actually approved them as a multi-family residential use.

Mr. Lentz said yes. He added that last time we had a note that we weren't sure if they paid their public hearing fee; that that was amended and is on here now.

Ms. Lemire said that the two things that were missing are here and the PB had made the comment that they saw no other necessary changes.

Mr. Lentz said that the Findings of Fact look to be accurate.

Ms. Horner said except, potentially, for #5 – multi-family residential use.

Ms. Lemire said that the applicant was proposing to continue that.

Ms. Bennett said yes.

The Planner said that the property isn't a legal multi-family; that it's been used as a rooming house.

Mr. Lentz said that he has a different definition of multi-use than what is the standard, that's for sure.

The Planner said that that's not permitted in that zone but if he wants to use it as a rooming house, he can do so as a continued non-conforming use. He added that, if we permit it as a multi-family, then we've actually increased his capacity.

Ms. Horner asked if it should say - and continue the non-conforming use - of whatever the Planner just said.

The Planner said that he didn't think we needed to address it; that the applicant proposes to replace an existing residence – we can say single-family residence – and reduce impervious footprint.

Ms. Lemire asked if the Planner was talking about the Findings of Fact.

The Planner asked if Ms. Lemire was suggesting we can't put that in the Findings of Fact.

Ms. Lemire said that his proposal was to continue the use that it has, now, that historically it has been used as; that the structure that he is replacing had more than one unit in it and there is documentation in the file that proves it was three units.

The Planner said that he doesn't know that it was proved as three units; that it was proved that there were multiple tenants paying rent; that that is a different scenario.

Ms. Lemire said that we don't have the minutes here so we might have to put this off.

Ms. Bennett said that this was part of the conversation. She added that she never received...there was reference to the Town knowing that this was a multi-family and there was some proof but that proof never appeared to the PB in the form of any rental records or anything like that.

Ms. Lemire said that electricity and that sort of thing is in the file.

The Planner said that his conversations with Ms. Painchaud is that it is not a multi-family; that there's no record of it as a multi-family. He asked, if we want to look at that documentation, do we want to postpone this to the next meeting.

Ms. Lemire said that she thought they should because there are a couple of discrepancies that are pretty important and the minutes need to be available.

The PB agreed to postpone this; that we need to get this cleared up, though, because it's way overdue.

ITEM 7 – NEW BUSINESS

A. 28 Levesque Drive, Unit 10 (PB19-2), Map 29/Lot 27-1A: Determination of completeness by Planning Board and Site Plan Review of the following: Change of

**Use Retail to Medical Marijuana Dispensary in Commercial/Industrial District –
Amendment to a previously-approved site plan.**

Received: March 1, 2019 (March 15, 2019)

1st Heard: March 19, 2019

2nd Hearing:

Site Walk:

Public Hearing:

Approval:

Mr. (Ian) Shaw, applicant, was present for this application.

Mr. Lentz asked the applicant to review his proposal. He added that, with first review, he thinks the applicant did a great job with his application.

Mr. Shaw read a prepared letter:

“My name is Ian Shaw and I have been a lifetime resident of Maine. I am the CEO of Holistic Wellness Company. I am here today to talk with you about our intentions to open a Caregiver Store at 28 Levesque Drive Unit #10.

In the short term we would like to open a medical Cannabis patient center.

In the future we would like to also operate in the adult use program. Which will probably happen in late 2019 or early 2020.

For the last 6 years we have been involved within the local Cannabis industry. During this time we have seen substantial growth, including hundreds of new jobs and HUGE economic stimulus. We’ve also seen the positive impact on town infrastructure and increased revenue streams to local business and local municipalities.

Upon the opening of this store, we are ready to set industry standards for what it means to operate a highly professional Cannabis retail business.

In order to achieve this goal, we rely on our six core principals: security, compliance, operational fluidity, education, culture, and cleanliness.

We ask that you, the town and people of Eliot, work with us to create history in Maine and help establish this store.

We are looking forward to a mutually beneficial relationship with you. Thank you for your consideration. I now would like to turn this over to my legal counsel, Christopher McCabe.”

Attorney McCabe, owner of McCabe Law, said that we specialize in Maine-specific cannabis law. He discussed the requirements of §33-189:

- Applicant has a current registered caregiver license
- Will submit an annual renewal of the registered caregiver license
- There will be no cultivation at this facility
- There is no intention to produce vibrations
- Waste removal will be done by the company
- There will be no electromagnetic interference – transmission or reception
- This establishment will have minimal traffic congestion concerns
- The pavement is well-prepared for this
- There aren't any additional visual obstructions that would be created
- There will be no lights that come anywhere near what the threshold lighting prohibitions are in the ordinance

Attorney McCabe discussed parking requirements of §45-495, saying that this section requires one parking space per 200 square feet of floor area, excluding bulk storage. He added that, with this establishment, which is the Eliot Commons, in total has 410 spaces and roughly has 41,000 square feet of retail, which comes out to a ratio of 1 to 100 for the entire Commons.

Ms. Bennett asked if he could tell her the square footage on Unit #10.

Attorney McCabe said that it was a little over 4,000 square feet and you need to have one parking space per 200 square feet. He added that all of the parking spaces for Eliot Commons is shared amongst all of the units.

The Planner said that the application is complete and there really isn't a need for site plan review because they are going into a previously-approved site. He added that, technically, this could be approved through §33-140 administratively but the issue, here, is the 500 feet of separation.

The PB agreed.

Attorney McCabe, referencing an email he sent to the Planner, discussed the separation issue. He said that the buffer is for 500 feet and, as you know, Baran Place is 350 feet from the business to the (Baran Place) property line; that even before we consider the fairness of that and whether or not it should be determinative in the application, that he thinks just based on the definitions, or lack of definitions, it is clear that Baran Place is not a "residential property". He added that 'residential property' is not defined in the ordinance; that residential dwelling unit is defined: *means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family.* He said that he bolded that last part because it's the most important part to our stance on this; so, under this definition, the assisted living home would not fall under it because it contains 41 non-family residents at Baran Place. He added that when an ordinance or a town-level law doesn't contemplate a definition or phrase, at all, then the court would look up to the next level, which is our State-level of law; that in our statutes, there is only one definition that's close and it's in 33 M.R.S. §171, "*Residential real property*" means real estate consisting of one or not more than 4 residential

dwelling units”; so, that again, at the State level, would show that Baran Place does not qualify.

Ms. Bennett asked if Unit #10 was a condo unit.

Attorney McCabe said no, that it’s commercial.

Ms. Bennett asked if the applicant owned the land under Unit #10.

Attorney McCabe said no, we are leasing.

Ms. Bennett asked what are the property lines for Unit #10.

Attorney McCabe said that there is a common owner for the entirety of Eliot Commons.

Ms. Bennett said that she would argue that the property line of the unit in question is the property of Eliot Commons, not the actual unit the applicant is leasing.

Attorney McCabe said that he would argue that the language is specific to the building in terms of the marijuana establishment but, in terms of the sensitive use, that it is the property line.

Ms. Horner said that she would suspend her belief that Baran Place isn’t a residential unit, for a moment, asking how he proposes getting around the Post Office.

Attorney McCabe said that the law states that there’s no use or possession on what is public property and, in this case, there wouldn’t be; that there would be a private walk from the parking lot into the marijuana establishment.

Ms. Horner said that the Post Office, in her opinion, is a ‘public facility’.

Attorney McCabe said that there is no plan to cross over with the Post Office.

Ms. Horner said that he is within 500 feet of a ‘public facility’.

Mr. Lentz said that, if you read the marijuana ordinance, it talks about 500 feet from a ‘public facility’, and there is a definition of ‘public facility’ in the ordinances.

Attorney McCabe said that he has been addressing the ‘residential property’ concern, which it does say ‘residential property’, as well.

Ms. Horner said that that is why she was suspending belief on the argument on Baran Place; that now she would like to hear why the applicant is not within 500 feet of a public facility or how you are 500 feet outside of a public facility.

Attorney McCabe said that this is the first this has been brought o his attention, that there is that business right there. He added that he would look at the definition for public facility in the ordinance and go from there.

Ms. Bennett said that one of the things that would be helpful is to give us a little more definition, here, on the site plan; that we have an outline of the property line in its entirety of Sea Dog Reality but it would be good to have the building laid out on that property, the actual land.

Attorney McCabe said that he thinks it is in one of the packet pages.

Ms. Horner read the definition of public facility: *“any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.”*

Attorney McCabe said that he would have to look into that. He added that, before the need to address that comes, he believes there is a provision in the ordinance proposed for “adult use” and perhaps it’s somewhere here for our application in ‘medical’, as well, that these particular requirements under this section of the site plan review that a non-conformance of them wouldn’t necessarily require a variance; that that could be approved despite, if it’s the choice of the PB.

The Planner said that that was in the current draft adult marijuana ordinance and that was, in fact, an incorrect interpretation on his part; that that was about the separation of uses – 1 and 2 opening within the applicable buffer zone – and he thought that was providing discretion to marijuana establishments within that buffer zone.

Ms. Horner said that before she could move forward on this application, she would need to see a map, with radius drawing, with the 500 feet drawn out, because there’s also residents across the street so it’s not just Baran Place. She added that the attorney is also using the argument that kind of discards the newer adult...regarding the Post Office; that, then, it’s all residences across Beech Road. She said that the daycare is probably out of the zone because that lies out behind that field, reiterating that she would like to see a blown-out radius drawing so that we can be aware of what touches within that. She added that she was actually not even concerned about Baran Place because all she could think about is the Post Office and the daycare across the street.

Attorney McCabe said that, perhaps another option is that because something like the Eliot Commons, with how commercial, and centrally commercial, and industrial it is, if not there, then where; that it seems like the practical effect of your zoning is a ban, which he doesn’t think is the intent.

Mr. Lentz said that those were good points.

Ms. Bennett agreed, saying that these are pieces the PB has discussed before.

Attorney McCabe said that the PB could move to amend and take out public facility and, also, the residential; that that could be a consideration for next time.

Ms. Horner said that that's tough because the citizens of Eliot encourage us to follow the ordinances, as written, because they are to protect the citizens of Eliot; that she appreciates what the applicant is asking us to do but that has to happen in a formal way.

Attorney McCabe said that you absolutely can make that motion amend it.

Ms. Horner said that she would not make that motion; that she would encourage him to come back to the PB with our requests and then, maybe, we can talk about it more then.

Ms. Bennett agreed that our hands were tied by the ordinance and, in order to look at your site plan, we need to have a little more detail as to those distances that are limiting; that then if you don't like our decision, then you do have the recourse of the Board of Appeals, which is a route that has been taken before.

Attorney McCabe asked if the PB's definition was that it was the entire property line of Eliot Commons or is the PB's definition the boundaries within Unit #10; that that's going to be the real wiggle worm because he's talking about 200 feet between unit to road.

Ms. Horner suggested the applicant give us both of those; that, obviously, not that we can't do this with the other board members here but, potentially in the next PB meeting, we'll have more voices to consider this.

Attorney McCabe said that he would make the argument against that because the only space that we have any right to possession to is the unit, itself; that the applicant and the business have no control over one corner or the other; that the owner can dice up the leasing any which way.

Mr. Lentz said that that is all well and good but he wants legal advice on that.

The Planner said that he was looking at that from the front of the store and running that radius out from there; that he doesn't know if the footprint of the building needs to be considered such that you are also considering dimensions out from the back of the building. He added that there will be product moved in and out of there or are we only concerned with where patrons come to the store and interface that way.

Ms. Bennett said that we are not going to make a decision tonight but, to the Planner's question, she would say that, at a minimum, it would be the actual walls of the unit that the applicant is leasing; that those would be the edges which the applicant would be measuring from; so, yes, it would be the back of the building because we have to hold this applicant to the same standard that we hold anyone else that wasn't necessarily leasing a condo unit but leasing a stand-alone building.

Attorney McCabe said that we don't own the rest of the building.

Ms. Bennett agreed but said that, with the unit the applicant is leasing, we're going to talk about the back door.

Attorney McCabe said that he thought the answer would probably be in case law; that it's not in the ordinances.

Ms. Bennett said that that's beyond the PB's scope; that we will make our decisions according to the ordinances and then you can take up case law with someone else.

Attorney McCabe thanked the PB for their consideration and said that they would absolutely get the PB what's been requested, including a radius drawing around the building and how to deal with the Post Office, specifically, but with anything else that comes within that radius.

Ms. Bennett said that one of the things within the site plan that we require is that you need to label what the actual uses are adjacent to the property; that you really need to label out who is what and where. She asked that the ordinance (marijuana) be attached to the application that they are actually referring to; that that could be done internally.

Mr. Shaw asked if, for instance, in a mall with a certain number of units, do you simply divide the square footage of the building by the amount of parking spaces to get the amount that way.

Ms. Bennett said that that seemed like a reasonable calculus.

Mr. Shaw said that most shared units do have a common area that there's not a defined parking for.

Mr. Lentz asked how many employees the applicant would have and how many customers on a given day.

Mr. Shaw said they would have 5 to 6 employees and from 10 to 20 clients.

Mr. Lentz asked if the applicant could be ready for the next meeting on April 2nd.

Mr. Shaw said yes.

ITEM 8 – CORRESPONDENCE

There was no correspondence.

ITEM 9 – UPDATES

There were no updates.


ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

Notice of Decision for PB 18-4.
Second hearing for the application just heard.

The next regular Planning Board Meeting is scheduled for April 2, 2019 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 9:38 PM.


Dennis Lentz, Chair
Date approved: 4/2/19

Respectfully submitted,

Ellen Lemire, Recording Secretary